

INVITATION FOR BID

IFB NUMBER: 03-011
DATE OF THIS REQUEST: November 22, 2002
DESCRIPTION: Annual Maintenance of the Town's Municipal Cemetery
BID DEADLINE/OPENING DATE: December 20, 2002, 2:00 P.M.

For information relating to this IFB or to schedule a pre-bid meeting, please contact:

James Weeks or Edward B. Tucker
360 Falmouth Street
Warrenton, VA 20186
540-347-1858
e-mail jweeks@ci.warrenton.va.us

For procurement related information, please contact:

Purchasing Agent
18 Court Street
P.O. Drawer 341
Warrenton, VA 20188
540-347-1101
e-mail staff@ci.warrenton.va.us

The Town of Warrenton is requesting sealed bids to provide annual grounds maintenance of its 7-acre public cemetery located in the Town of Warrenton at the intersection of Lee and Keith Streets.

SPECIAL TERMS & CONDITIONS

Contract Start Date

Contractor must be able to begin work no later April 1, 2003.

Bidder Qualifications

Successful bidder must provide the Town Of Warrenton with proof of local licensing, if applicable and a

list of mowers/equipment to be used to perform the work.

Examination of Municipal Cemetery

Bidders should inspect the Municipal Cemetery so that they can make their own judgment concerning all circumstances affecting the cost of service in question and the nature of the work to be performed. Bidders shall assume all risks, whether or not patent, latent, know, hidden, or foreseeable.

Insurance Requirements

The contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the contractor, his agents, representatives, employees or subcontractors.

The contractor shall provide a certificate of insurance naming the Town of Warrenton as additional insured **and, if requested** a certified copy of said policy or endorsement(s) before commencement of contract. All insurance shall be placed with an insurer licensed to do business in the Commonwealth of Virginia. The underwriter shall be subject to the approval of the Town of Warrenton.

The contractor shall maintain limits no less than:

- a. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. The general aggregate limit shall apply separately to this project/location or the general aggregate shall be twice the required occurrence limit.
- b. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- c. Workers' Compensation and Employers Liability: Worker's Compensation as required by the Code of the Commonwealth of Virginia and Employers Liability limits of \$1,000,000 per accident.

Contractor's Office

The Contractor shall maintain an office and a local or 800 telephone number with continuous supervision for accepting calls from the Municipality during the business hours. The Contractor is responsible for all corrective actions (to be taken within 24 hours of the next business day) and a log of complaints and corrective actions shall be kept by the Contractor and reported on a weekly basis to the Municipality. Contractor will supply the Municipality with the telephone number of their office.

Complaints and Supervision

The Contractor shall provide a responsible supervisor who shall be available and may be contacted at a telephone number during each working day between the hours of 8:00 A.M. and 4:30 P.M., Monday through Friday to receive complaints, assist with any problems, answer inquiries and resolve disputes with respect to services to be supplied pursuant to this contract. The Contractor will further be held responsible for the conduct and demeanor of the employees during the performance of their work. Said employees shall not use loud, abusive, profane or lewd language in their dealings with the public, nor shall they use lewd, abusive or profane language amongst themselves during the performance of their work. Further, said employees shall conduct their work as quietly as possible with a minimum of interference to pedestrian and vehicular passageway through the Municipality.

Contract Requirements

Successful offeror shall be required to enter into a formal contract, a sample of which is attached as "Exhibit B" with the Town of Warrenton.

Term of Contract

The term of the initial contract shall be for 1 year with options to renew for the following two additional one-year terms. The total contract term shall not exceed three years.

Contractor shall notify the Town of any proposed changes in unit prices at least ninety days (90) prior to the anniversary date. If the option to renew is to be exercised, the Town Manager or his designee shall negotiate with Contractor any proposed rate. Negotiations may include several factors such as the quality of service, consumer price index, etc. The contractor will be required to submit appropriate information to the Town Manager to document any request for an increase.

General Terms & Conditions

The General Terms & Conditions - Services, attached as Exhibit A shall govern this purchase.

Specifications for Annual Maintenance of Public Cemetery

1. Purpose

The Town of Warrenton is soliciting bids for the annual grounds maintenance of its 7-acre public cemetery located in the Town of Warrenton on the corner of Lee and Keith Streets. The following specifications for the work apply:

2. Scope of Work

The Contractor shall perform all required work and shall provide and furnish all labor, supervision, materials, necessary tools, expendable equipment, utility and transportation services and all else required to complete this work in accordance with the General Terms and Conditions, Special Terms & Conditions and project specifications, including any and all Addenda.

The first year of this contract will commence on April 1, 2003 and end on March 28, 2004. The optional second and third year contracts will begin and end on the approximately the same dates. Any option to extend the contract for two additional one-year terms will be based on performance and mutual agreement from both parties. Either party may opt out of the optional extension by giving the other party at least thirty days written notice prior to the commencement of the second or third year term.

3. Work Required/Standards

a. Mowing and Trimming Requirements

- i. Litter Control: removal of all litter and debris from areas prior to each mowing and trimming operation.
- ii. Contractor shall be responsible for mowing and trimming all turf areas within existing boundaries of the cemetery properties as indicated on attached maps. Normally grass mowing season shall be from March 15 and continue through November 14, however grass shall be cut as necessary to maintain a height of not less than two (2") inches nor more than five (5") inches at all times. Grass around headstones, monuments, trees, sidewalks and/or any other structures of buildings shall be neatly trimmed after each mowing cycle. Trimming may be accomplished using herbicides as long as unsightly high weeds and grass do not remain untrimmed. The width of spray pattern around markers shall not exceed two (2") inches. Areas that have been sprayed must be trimmed 7 to 10 days after application. Mowing frequency shall be such that not more than one-third the height of the turf is removed at any one time to meet the two to five inch height requirement. Contractor shall ensure that sufficient equipment, material and personnel are available to ensure the aforementioned requirements are strictly complied with. Grass must be completely cut a minimum of every 7 days and at least 3 days before the following holidays:
 - Easter
 - Mothers' Day
 - Memorial Day
 - Father's Day
 - Independence Day
 - Labor Day
- iii. Cutting blades on mowing and trimming equipment must be kept sufficiently sharp

so that grass tips are properly cut, not torn or damaged. Cutting heights of all mowing and trimming equipment shall be set to prevent any scalping or damage to turf.

- iv. Both the mowing of any cemetery section and the trimming around headstones in that section shall be done within 24 hours of each other.
- v. The Contractor shall coordinate scheduling of all mowing, trimming, and/or other maintenance work to be performed in the immediate area and during the times of funerals, ceremonies or other on-going cemetery functions to ensure there shall be no conflict.
- vi. Rainy weather shall not be considered a valid cause for deviation from the specified mowing schedule except where the Public Works Superintendent or his authorized designee permits deviation.
- vii. Contractor shall remove excessive clippings from paved walkways, streets or grave markers after each mowing cycle.

b. Leaf Removal

- i. Beginning no later than 15 October, Contractor shall start removing all leaves that have fallen to the ground. Contractor has the option of either raking and removing or mulching to the satisfaction of the Public Works Superintendent. Mulched leaves do not need to be removed. Raked leaves shall be removed from internment sections and collected in designated areas/piles to be removed by Town leaf collection crews.
- ii. Contractor shall be required to remove all fallen leaves from the Cemetery grounds. Leaves shall be removed from all areas of the Cemetery at least once prior to 24 December. Additional leave removals are required as stated below.
- iii. Contractor shall schedule removal work to ensure there will be no undue accumulation of leaves that would inhibit turf growth in any area.
- iv. It is recognized that leaf removal must be repeated in certain areas after 24 December. However, all fallen leaves must be removed or mulched by 15 February. Leaves retained by trees until late Winter/early Spring will be removed at that time.
- v. Only hand operated, walking type, leaf-blowing machines shall be used in the internment areas. Large tractors drawn or self-propelled units shall be restricted to hard surfaces, unless otherwise authorized.

c. Tree Limbs and Brush Removal

- i. Contractor is to collect all limbs or deadfall from trees and bushes 6" in diameter or less. Limbs/brush are to be removed or deposited in designated areas for removal by Town staff. Limbs over 6" in diameter will be removed by Town staff.

- 4. Damage: Damage Prevention to Turf, Headstones and other Town property. Contractor shall be responsible for taking necessary precautions to prevent damage to headstones, markers, monuments, flower vases and other structures during maintenance operations. Particular care will be necessary to protect headstones from chipping, scraping, scratching, breaking or soiling. The following minimum precautions shall be taken to avoid the damage:
 - a. Power mowers shall not be operated closer than four (4) inches to headstones, monuments, markers, other structures or tree trunks.
 - b. Outside wheel widths on riding type tractors shall not exceed the width of the mower deck. Speed of all lawn mowing equipment shall be restricted to that required for safe and prudent operations, depending upon ground conditions, but shall not, under any circumstances exceed four (4) miles per hour.
 - c. Scalped turf (i.e. turf cut down to ground level) will be considered damage to Town property. If said turf dies, the Contractor will replace turf at his expense.
 - d. No tools or other articles shall be placed on or leaned against headstones. Contractor's personnel shall not be permitted to sit on or lean against headstones at any time.
 - e. Contractor shall be responsible for, and must replace at his own expense, any headstone,

monument, flower vase, tree or other structure that is damaged by the Contractor's employees who are not in compliance with the requirements for safe and prudent operations indicated in these specifications.

- f. Grass clipping discharged onto headstones, monuments, and mulched areas (such as flower beds and tree basins) must be removed by Contractor within forty-eight (48) hours.
 - g. String trimmers shall be used to trim grass from around headstones, monuments, markers, tree trunks or other structures.
5. Standards of Conduct: Contractor and Contractor's employees shall be required to adhere to the following standards of conduct while performing any work in the Town of Warrenton Cemetery:
 - a. Contractor shall not operate trucks, tractors or other heavy industrial equipment on any turf area except as authorized by the Public Works Superintendent.
 - b. Contractor's employees must be fully clothed at all times, to include an upper garment to cover the body from the waist to neck (T-Shirts without offensive words or graphics are appropriate, muscle shirts are not).
 - c. Contractor's employees must not engage in loud or boisterous behavior or use profane, vulgar or abusive language while working in the Town Of Warrenton Cemetery.
 - d. Contractor's employees must not eat or drink beverages except water while in work areas. Eating or consumption of refreshments shall be limited to approved lunch or rest areas.
 - e. Intoxicating beverages and/or drugs shall not be permitted in the Cemetery.
 - f. No area of the Cemetery, except duly designated rest rooms, shall serve as a toilet.
 - g. Contractor's personnel shall observe and obey all vehicle speed regulations while operating vehicles and equipment in the Cemetery. Contractor's personnel shall use alternative routes to and from work areas in the cemetery to avoid funerals and ceremonies.
6. Hours of Maintenance: All work is to be performed during normal Town work hours of 7:00 AM to 7 PM, Monday through Friday. Contractor will not be permitted to work on any of the following holidays:
 - New Years Day – 1st day of January
 - King Lee Jackson Day – 3rd Monday in January
 - President's Day – 3rd Monday in February
 - Memorial Day – Last Monday in May
 - Independence Day – 4th day of July
 - Labor Day – 1st Monday in September
 - Veteran's Day – 11th day of November
 - Thanksgiving Day – 4th Thursday in November
 - Christmas Day – 25th day in December
7. Payment: Contractor will submit an invoice for payment on a monthly basis. The invoice is to be submitted no later than the 5th of each month and the Town will make payment no later than three (3) weeks after receipt of the invoice. Monthly payments will be made on the basis of the bid and an approved schedule of values for each month.
8. Optional Bid: Eva Walker Park, Mowing and Weedeating. The Town is accepting an optional bid for the Town owned 5.7 acre Eva Walker Park. The bid is a unit price per event to mow and weedeat the grass in the park and along its boundary. The Town reserves the right to award this option separate of the cemetery.

**Town of Warrenton, Virginia
Price Quote Sheet**

IFB NUMBER: 03-011

DATE OF THIS REQUEST: November 22, 2002

DESCRIPTION: Annual Maintenance of the Town's Municipal Cemetery

BID DEADLINE/OPENING DATE: December 20, 2002, 2:00 P.M.

Lump Sum Annual Fee \$ _____

The following is a breakout of proposed monthly billings, subject to the approval of the Public Works Department prior to contract award:

April 2003	
May 2003	
June 2003	
July 2003	
August 2003	
September 2003	
October 2003	
November 2003	
December 2003	
January 2003	
February 2003	
March 2003	

Optional Bid: Eva Walker Park \$ _____, per event.

Terms: (Please identify any discounts offered for prompt payment, etc.)

Company Name	
Contact Person	
Address	
City	State Zip
Phone	Fax
e-mail address	Federal Tax ID Number:
Authorized Signature	
Title	
Printed Name	
Date	

Exhibit A

TOWN OF WARRENTON, VIRGINIA GENERAL TERMS AND CONDITIONS SERVICES

1. MANDATORY USE OF TOWN FORM AND TERMS AND CONDITIONS

Failure to submit a bid/proposal on the official Town form provided for that purpose shall be a cause for rejection of the bid/proposal. Return of the complete document is required. Modification or additions to any portion of the solicitation may be cause for rejection of the bid/proposal; however, the Town reserves the right to decide, on a case by case basis, in its sole discretion, whether or not to reject such a bid/proposal as nonresponsive.

2. PRECEDENCE OF TERMS

In the event there is a conflict between the General Terms and Conditions and any Special Terms and Conditions for use in a particular procurement, the Special Terms and Conditions shall apply.

3. CLARIFICATION OF TERMS

If any prospective bidder/offeree has questions about the specifications or other solicitation documents, the prospective bidder/offeree should contact the Director of Purchasing or the Department Head whose name appears on the face of the solicitation no later than five days before the opening date. Any revisions to the solicitation will be made only by addendum issued by the Purchasing Director.

4. TESTING/INSPECTION

The Town reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

5. PAYMENT TERMS

Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days.

6. INVOICES

Invoices for items ordered, delivered and accepted shall be submitted by the bidder/offeree direct to the payment address shown on the purchase order/contract. All invoices shall show the Town's contract number and/or purchase order number.

7. DEFAULT

In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Town, after due oral or written notice, may procure them from other sources and hold the bidder/offeree responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Town may have.

8. ASSIGNMENT OF CONTRACT

A contract shall not be assignable by the bidder/offeree in whole or in part without the written consent of the Town.

9. ANTITRUST

By entering into a contract, the bidder/offeree conveys, sells, assigns and transfers to the Town of Warrenton all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Town of Warrenton under said contract.

10. ETHICS IN PUBLIC CONTRACTING

By submitting their bids/proposals, all bidders/offers certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder/offeror, supplier, manufacturer, or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

11. ANTI-DISCRIMINATION

By submitting their bids/proposals, all bidders/offers certify to the Town that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended. They must also conform to the American Disability Act of 1990 and Section 11-51 of the Virginia Public Procurement Act which provides:

In every contract over \$10,000, the provisions in A and B, below apply:

A. During the performance of this contract, the bidder/offeror agrees as follows:

The bidder/offeror will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonable and necessary to the normal operation of the bidder/offeror. The bidder/offeror agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

The bidder/offeror, in all solicitations or advertisements for employees placed by or on behalf of the bidder/offeror, will state that such bidder/offeror is an equal opportunity employer.

Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting requirements of this section.

B. The bidder/offeror will include the provisions of A. above in every subcontract or purchase order over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

12. INDEMNIFICATION

Bidder/offeror agrees to indemnify, defend, and hold harmless the Town of Warrenton, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, services or equipment of any kind or nature furnished by the bidder/offeror, provided that such liability is not attributable to the sole negligence of the Town or to failure of the Town to use the materials, goods or equipment in the manner already and permanently described by the bidder/offeror on the materials, goods or equipment delivered. The vendor agrees that this clause shall include claims involving infringement of patent or copyright.

13. DEBARMENT STATUS

By submitting their bids/proposals, all bidders/offers certify that they are not currently debarred from submitting bids/proposals on contracts by the Town of Warrenton, nor are they an agent of any person or entity that is currently debarred from submitting bids/proposals on contracts by the Town of Warrenton.

14. APPLICABLE LAW AND COURTS

Any contract resulting from this solicitation shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The bidder/offeror shall comply with applicable federal, state and local laws and regulations.

15. QUALIFICATIONS OF BIDDERS/OFFERORS

The Town may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder/offeror to perform the work/furnish the item(s) and the bidder/offeror shall furnish to the Town all such information and data for this purpose as may be requested. The Town reserves the right to inspect the bidder's/offeror's physical plant prior to award to satisfy questions regarding the bidder's/offeror's capabilities. The Town further reserves the right to reject any bid/proposal if the evidence submitted by, or investigations of, such bidder/offeror fails to satisfy the Town that such bidder/offeror is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.

16. SAFETY

All contractors and subcontractors performing services for the Town of Warrenton are required and shall comply with all Occupational Safety and Health Administration (OSHA) and any other applicable rules and regulations. All contractors and subcontractors shall be responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract.

17. NOTICE OF REQUIRED DISABILITY LEGISLATION COMPLIANCE

The Town of Warrenton is required to comply with state and federal disability legislation: The Rehabilitation Act of 1993 Section 504, The Americans with Disabilities Act (ADA) for 1990 Title II and the Virginians with Disability Act of 1990.

Specifically, the Town of Warrenton, may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II of the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

18. OFFICIALS NOT TO BENEFIT:

Each bidder or offeror shall certify, upon signing a bid or proposal, that to the best of his or her knowledge not Town of Warrenton official or employee having official responsibility for the procurement transaction, or member o his or her immediate family, has received or will receive any financial benefit or more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.

EXHIBIT B

TOWN OF WARRENTON AGREEMENT FOR THE FURNISHING OF MATERIALS AND/OR SERVICES

THIS AGREEMENT, made and entered into this ____ day of _____, 2002, by and between _____ of the first part (hereinafter referred to at times as "Contractor") and the Town of Warrenton, Virginia, A Virginia Municipal Corporation, party of the second part, (hereinafter referred to at times as "Town").

WITNESSETH:

WHEREAS, pursuant to §2-197 et seq of the Code for the Town of Warrenton (adopted January 5, 1988) and §11-35 et seq of the Code of Virginia of 1950, as amended, the "Town" extended an invitation to bid for certain services to be rendered and materials furnished, all of which is more fully set out in the Proposal Sheet of the Town of Warrenton, a copy of which is attached hereto and incorporate herein by reference as Exhibit "A"; and

WHEREAS, in response to the described "invitation to bid", the Contractor, by his written proposal dated _____, did extend a bid for performing the described services and supplying the described materials; said written proposal which is incorporated herein by reference as Exhibit "B"; and

WHEREAS, pursuant to §2-205 of the Code for the Town of Warrenton (adopted January 5, 1988), the Town has determined the "Contractor" to be the lowest responsible bidder; and

WHEREAS, pursuant to §2-206 (a) of the Code for the Town of Warrenton (adopted January 5, 1988), the Town has determined the bid of the "Contractor" attached hereto as Exhibit "B" to be the lowest responsive bid; and

WHEREAS, the Town of Warrenton is of the opinion, and the Contractors, represent and covenant, that the Contractors are fully qualified and able to provide the services materials required of this contract, and that the Contractors have all registrations, certificates, licenses or permits, according to the law, rules or regulations of the United States Government, Commonwealth of Virginia, or any local jurisdiction, necessary to provide the services materials required of this contract in and for the Town of Warrenton, Virginia and are not currently debarred from submitting bids/proposals on contracts with the Town of Warrenton, nor are they an agent of any person or entity that is currently debarred from submitting bids/proposals on contracts with the Town of Warrenton; and

WHEREAS, the Town desires to award the contract for the furnishing of materials and services described in Exhibit "A" to the Contractor as the lowest responsive and responsible bidder pursuant to the terms and provisions of this contract; and

WHEREAS, the Contractors acknowledge and represent that the Town of Warrenton has made available to them, and they have inspected or examined, or have had the opportunity to inspect or examine the contents of all plans, documents, and specifications contained in this proposal and all other equipment, environment or items of any kind or nature which is necessary to fulfill their responsibilities under this contract, and in consideration of which, both of the parties hereto fully understand the terms, conditions, scope, and responsibilities concerning the providing of the services and materials of this contract.

NOW THEREFORE, in consideration of the mutual promises, covenants, agreements and understandings,

hereinafter contained, as well as in consideration of the sum of ONE DOLLAR (\$1.00) cash in hand paid by each of the parties hereto to the other, receipt whereof, at and before the signing and sealing of these presents, it is hereby acknowledged, the said parties do hereby covenant and agree as follows:

1) **PERFORMANCE:**

The Contractor agrees to perform all work and services required of him in a professional workmanlike manner as set out in the Invitation for Bid of the Town attached hereto as Exhibit "A". He agrees to comply all requirements of the specifications contained in the invitation for bids, the Town of Warrenton Public Facility Manual, and any other requirements and/or regulations of the Commonwealth of Virginia or the United States Government.

A) Contractor agrees to provide any payment or performance bonds required by the Code of the Town of Warrenton (Adopted January 5, 1988) (§2-213) and/or the Code of Virginia of 1950, as amended.

B) All plans, documentation, reports and or illustrations which may constitute the "Product" shall remain or become the sole property of the Town of Warrenton; including, the right to obtain exclusive license or copyrights on said products as applicable. Contractors hereby waive, assign, and/or release to the Town of Warrenton any claim they may have, whether by common law or statutory rights, pertaining to the ownership, use, reproduction, assignment, sale or transfer of the products produced from this contract or their rights to obtain copyrights and extensions, thereof and to prevent the infringement thereof or licenses for the exclusive ownership and control of the product. Contractor agrees to assign any rights and to cooperate with Town of Warrenton in connection with any suit or action threatened or instituted by or against the Town of Warrenton relating to the rights herein set out.

2) **FURNISHING OF MATERIALS AND WORK:**

The Contractor agrees to furnish all materials and perform all services and labor described in accordance with the plans and specifications attached to the Invitation to Bid of the Town. Any changes in the plans and specifications shall be in writing signed by both parties with a notation of the price of such changes.

3) **PAYMENTS TO CONTRACTOR:**

The Town agrees to pay the Contractor for said work and materials in the amount set out in the bid of the "Contractor" as attached hereto upon acceptance of the work by the TOWN unless set out differently within the described Invitation to Bid of the TOWN or as set out hereinafter:

4) **COMPLETION OF WORK:**

The Contractor agrees to commence work on or before _____, 2003. Thereafter, he agrees to complete the work according to the plans and specifications, and any agreed changes thereto, described in the Town "Invitation to Bid" in a timely manner, but no later than _____. At the completion of the work, the "Contractor" agrees to furnish to the Town a waiver of all Mechanics' and Materialmen's Liens, suitable in form and completeness to the Town.

A) The parties hereto may extend or modify these completion times by subsequent written agreement.

B) If contractors do not complete the work within the time limit(s) described herein, liquidated damages in the amount of \$_____ per calendar day will be assessed.

5) **CONDITIONS:**

This agreement is specifically conditioned upon the following:

A) _____

B) _____

C) _____

6) INSURANCE AND INDEMNIFICATION:

A) The Contractor shall maintain such insurance with minimum coverage limits of _____ as will protect and indemnify the Town from claims under workmen's compensation acts and from claims for damages because of property damage or bodily injury, including death, which may arise from and during operations under this contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them.

B) The Contractor agrees to indemnify, defend and hold harmless, the Town of Warrenton, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from, or caused by, the use of any materials, goods, or equipment of any kind or nature furnished by the contractor; any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the Town or the failure of the Town to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods, or equipment delivered.

7) TERMINATION OF CONTRACT AND REMEDIES:

A) This contract shall automatically terminate upon the contractor's loss of any license required to conduct its business in Virginia or to perform the services required by this contract.

B) The Town shall have the right, at its sole discretion, to terminate the contract in the occurrence of any of the following events:

i) If the Contractor shall default in the performance of his duties hereunder or in the completion of the work within the time specified, and the default shall not be corrected within ten (10) days after written notice by the Town to the Consultant/Contractor at its address set out herein, then and in that event.

ii) If the Contractor shall become insolvent and/or file a petition of bankruptcy.

C) No failure of the Town of Warrenton, in its sole discretion, to seek termination of this contract/or legal redress of any defaults by the Consultant/contractor, shall constitute a waiver of future default or right to exercise any and all legal rights described herein.

D) In the event of termination of this contract pursuant to its terms and provisions, the Town may seek such legal remedies as may be available to it, including:

i) Procuring such services from any other sources and hold the contractor for any resulting additional purchase and administrative costs.

ii) Suit for all damages for breach of this agreement, which the contractor agrees shall include, but not be limited to, administrative costs and reasonable attorney fees incurred.

8) INTERESTS OF CONTRACTORS

Contractors covenant and represent that they are aware of the provisions of the "Virginia State and Local Government Conflict of Interests Act" contained in §2.1-639.1 et seq of the Code of Virginia of 1950, as amended, and the "Ethics in Public Contracting" laws contained in §11-72 of the Code of Virginia of 1950, as amended, and §2-261 of the Code for the Town of Warrenton, as amended, pertaining prohibited conduct in regards to contracts by local government(s) and to which they specifically represent and covenants they are in compliance, including but not limited to:

A) That they have no interest or relationship, direct or indirect, to any member of the Town Council for the Town of Warrenton, employee or representative of the Town of Warrenton which would prohibit the award of this Contract or nor have they engaged in any conduct which would constitute prohibited conduct or a conflict of interest under the provisions of laws of the Commonwealth of

Virginia or the Town of Warrenton.

- B) Contractors covenant that they have not engaged in or participated directly or indirectly in any conduct prohibited by the provisions of §11-78 of the Code of Virginia of 1950, as amended, including, but not limited to, i) their having neither demanded, nor received from any other bidder/offeror, supplier, manufacturer, or subcontractor any kickback, payment, loan, subscription, advance, deposit of money, services or anything present or promised as an inducement for the award of their proposal, or any subcontract or order related to this contract; ii) that their proposal is made without collusion or fraud; iii) that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan subscription, advance, deposit of money, services or loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

9) **NON-DISCRIMINATION**

A) The Contractors represents and certifies that they presently are, and will in the future, conform and comply with all provisions and requirements of law in all aspects pertaining to: the submission of the described bid as incorporated herein as Exhibit "B"; the negotiation and execution of this contract; the performance of all services required by this contract; the furnishing of all materials required by this contract; and all its intents including, but not limited to compliance with all applicable provisions of Federal, State and local law including, but not limited to:

- 1) the Federal Civil Rights Act of 1964 as amended;
- 2) the "Virginia Fair Employment Act of 1975, as amended," [§2.1-376.1, **et. seq.**, of the Code of Virginia of 1950, as amended];
- 3) the "Virginia Public Procurement Act" [§11-51 **et. seq.** of the Code of Virginia of 1950, as amended];
- 4) the "Americans with Disabilities Act of 1990 (ADA) [42 U.S.C. §12101, et seq., as amended];
- 5) any non-discrimination regulations or requirements of law as placed by the United States and/or Commonwealth of Virginia in the performance of this contract;.,

B) In complying with the provisions of law, the Contractor agrees as follows:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor will not discriminate against any employee or applicant for employment with a disability capable to perform the essential functions of any job, with or without reasonable accommodations, as defined as qualified or otherwise provided by the American with Disabilities Act of 1990.

(i) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(ii) The contractor will include the provisions of A) above, in every subcontract or purchase order over Ten Thousand Dollars (\$10,000.00), in order that the provisions be binding upon each subcontractor or vendor.

2) The contractor in all solicitations or advertisements for employees placed by or on behalf of the contractor will state that such contractor is an equal opportunity employee.

(i) Notices, advertisements, and solicitations placed in accordance with federal law, rules or regulations, shall be deemed sufficient for the purpose of meeting the requirements of this section.

10) **ASSIGNMENT**

The obligations, and responsibilities of the Contractors under this Contract may not be assigned, either in whole or in part, without the written consent of the Town of Warrenton.

11) **GOVERNING LAW AND COURTS:**

This agreement shall be governed by the laws of the Commonwealth of Virginia. Any litigation with respect to this Contract shall be brought within the courts of the Commonwealth of Virginia. Additionally, both parties hereto acknowledge the Circuit Court of Fauquier County, Virginia to be the preferred venue for litigation on any issue pertaining to this agreement.

A) The Contractor shall comply with applicable federal, state, and local, laws and regulation.

B) The Contractor shall comply with all requirements of law of the Town of Warrenton, including, but not limited to those described and contained in the Code for the Town of Warrenton [Adopted January 5, 1988], and the Public Facilities Manual for the Town of Warrenton.

C) Any invalidation of any term or provision of this Agreement shall not modify, impair or otherwise affect the validity of the remainder of this Agreement, and the remainder of this Agreement shall continue in full force and effect as fully as though the invalidated term or provision were not a part hereof.

12) **BINDING EFFECT:**

All parties acknowledge that the binding effect of this agreement shall be specifically subject to full compliance with all applicable provisions and procedures concerning procurement of professional services contained in §11-37 **et. seq.** of the Code of Virginia of 1950, as amended, and §2-218 of the Code for the Town of Warrenton, as amended, and is subject to final approval through appeal procedures contained therein. In the event that this agreement is canceled due to any of the appeal procedure(s) contained in §11-37 **et. seq.** of the Code of Virginia of 1950, as amended, and §2-218 **et. seq.** of the Code for the Town of Warrenton, then in that event, this agreement will be deemed canceled without further obligation or claim on behalf of either party.

13) **ENTIRE AGREEMENT**

A) The proposal for _____ dated _____ submitted by the Contractors, where not in conflict with the provisions of this Contract, are incorporated herein and made a part hereof by reference as Exhibit "B". In the event of conflict with any provisions herein, the provisions of this contract will supersede and control. The following documents constitute the entire understanding of the parties:

i) The Town of Warrenton invitation to bid dated

ii) All plans and specifications in possession of the Town of Warrenton and/or referred to in this agreement or in the invitation to bid which were incorporated by reference.

iii)The proposal of the contractor dated _____.

These documents supersede any and all prior agreements, representations, or understandings between the parties. No representations or warranties other than those expressly herein set forth herein are of any force and effect.

i) No modification or waiver of any of the terms hereof, shall be valid unless in writing and signed by both of the parties. No waiver of any breach hereof or default hereunder shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

WITNESS the following signatures and seals effective the date hereinabove first written:

PARTY OF THE FIRST PART:

(CONTRACTOR) Date

(ADDRESS)

(TELEPHONE)

PARTY OF THE SECOND PART:

TOWN OF WARRENTON

By _____
Town Manager Date

(190 BID-CONT.DOC - 4/30/92 ed.)